

***Zakkour v The Queen* [2020] VSCA 72 (26 March 2020) – Victorian Court of Appeal**

‘Application for leave to appeal against sentence’ – ‘Breach of protection order possession of weapon’ – ‘Separation

Charges: Criminal damage x 1; attempt to pervert the course of justice x 1; possess prohibited weapon x 1; contravene family violence intervention order x 1

Case Type: Application for leave to appeal against sentence for possess prohibited weapon

Facts: In 2019, the applicant went to his former partner’s property and caused damage. He was arrested the next day, and police searched his vehicle and found a home-made laser pointer. While in custody, he made telephone calls whereby he attempted to have people call his former partner and ask her to withdraw her police statement. The applicant pleaded guilty to criminal damage, and attempting to pervert the course of justice. He also pleaded guilty to 2 summary offences, carrying a prohibited weapon and contravening a family violence intervention order. The applicant was sentenced to a total effective sentence of 2 years’ imprisonment, with a non-parole period of 15 months. The individual sentence imposed on the weapon offence was 2 months’ imprisonment to be served cumulatively on the sentences for the other offending.

Ground: The sentence and the order for cumulation on this charge was manifestly excessive because, inter alia, the offending was not aggravated in any material way and the accused pleaded guilty to the offence at the earliest available opportunity.

Held: The Court allowed the appeal, set aside the sentence on the weapon offence, and ordered that the applicant be convicted and discharged on that charge. The applicant’s counsel submitted that the laser pointer had not been used as a weapon, and that it was not used in connection with any of the other offending. Despite the fact that the applicant had prior convictions for possessing controlled and prohibited weapons, it was clear that the sentence for the weapon offence was "egregiously excessive", given the intrinsic nature of the weapon, the lack of material as to whether the applicant had or would have used it, and the complete absence of evidence supporting the sentencing judge’s findings that it was potentially dangerous and could cause injury ([18]). As a consequence, the total effective sentence was amended to 22 months’ imprisonment with a non-parole period of 13 months.